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STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

In re:

Colleen Marie Fitzgerald,

Respondent.

**NOTICE OF INTENT TO IMPOSE FINE AND
NOTICE OF RIGHT TO REQUEST HEARING**

The licensing and regulation of mortgage brokers and mortgage agents in the State of Nevada is governed by Chapter 645B of the Nevada Revised Statutes ("NRS") and Chapter 645B of the Nevada Administrative Code ("NAC"). The State of Nevada, Department of Business and Industry, Division of Mortgage Lending ("the Division") has the general duty to exercise supervision and control over mortgage brokers and mortgage agents, as well as mortgage broker and mortgage agent activity. See, NRS 645B.060(1), NRS 645B.670 and NRS 645B.690. Pursuant to that authority, the Division makes Factual Allegations, Violations of Law, and Order, as follows:

FACTUAL ALLEGATIONS

1. Based upon information and belief, on approximately October 26, 1989, Nevada Loan Source was registered with, and issued a mortgage broker license (No. 31) by, the Financial Institutions Division, Department of Business and Industry, State of Nevada, pursuant to Chapter 645B of NRS.

2. Based upon information and belief, Nevada Loan Source conducted mortgage lending activity in the State of Nevada as a licensed mortgage broker from approximately October 26, 1989, to approximately July 1, 2009, when it failed to renew and closed. See,

1 NRS 645B.050(1).

2 3. Currently, Nevada Loan Source's status with the Division is "closed."

3 4. On approximately June 19, 2006, Respondent, Colleen Marie Fitzgerald
4 ("Respondent"), was issued a mortgage agent license (No. 38756) by the Division pursuant to
5 Chapter 645B of NRS.

6 5. Based upon information and belief, Respondent was affiliated with, or employed by,
7 Nevada Loan Source as a mortgage agent and conducted mortgage lending activity in the
8 State of Nevada on its behalf from approximately December 5, 2006, until approximately
9 June 20, 2009, when her mortgage agent license was cancelled for failure to renew. See,
10 NRS 645B.430(1).
11

12 6. Currently, Respondent's status with the Division is "license cancelled."

13 7. Based upon information and belief, at relevant times herein mentioned,
14 complainants herein, MN and PTT ("Complainants") were the owners of certain real property
15 located on Silver Stream Drive, Carson City, Nevada 89703 (the "Property").
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17 8. On or about March 24, 2009, the Division received a written complaint ("Complaint")
18 from Complainants alleging, among other things, that:

19 a. Respondent promised Complainants a construction loan to be secured by a
20 lien on the Property;

21 b. Complainants deposited with Respondent a \$2,500.00 check made payable
22 to Respondent as an upfront fee for her services, a \$1,500.00 check made payable to Seattle
23 Funding Group, and paid Respondent \$400.00 for an appraisal; and

24 c. After Complainants declined the only loan that was offered to them (which
25 they claim was at a high interest rate and fees), Respondent failed to remit the fees back to
26 Complainants.
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1 9. Pursuant to NRS 645B.060, the Commissioner shall exercise general supervision
2 and control over mortgage brokers and mortgage agents doing business in this State and “is
3 charged with conducting...such investigations as may be necessary to determine whether any
4 person has violated any provision of this chapter, a regulation adopted pursuant to this chapter
5 or an order of the Commissioner.” See, NRS 645B.060(2)(c).

6 10. Pursuant to NRS 645B.610, the Division is also charged with investigating “...each
7 violation alleged in (a) complaint...” received by the Division and “...shall determine from the
8 investigation whether there is reasonable cause to believe that the person committed the
9 alleged violation....” See, NRS 645B.610(1), (3).

10 11. Pursuant to NRS 645B.060, the Division is further charged with conducting
11 “...such other investigations, periodic or special audits, investigations and hearings as may be
12 necessary for the efficient administration of the laws of this State regarding mortgage brokers
13 and mortgage agents....” See, NRS 645B.060(2)(e).

14 12. After receiving the Complaint regarding Respondent, the Division conducted an
15 investigation of the allegations in question, which included sending Respondent and her
16 attorney at the time, David Allison, correspondence requesting a response to the Complaint
17 and contacting Mr. Allison by telephone regarding additional questions.

18 13. The relevant findings of the Division's investigation were that:
19

20 a. Respondent prepared a letter dated October 7, 2008, addressed to
21 Complainants on Nevada Loan Source letterhead in which Respondent discussed loan terms;
22

23 b. The GFE and other loan documents reflect Respondent as the loan agent
24 and Nevada Loan Source as the mortgage broker;

25 c. Complainants deposited with Respondent a \$2,500.00 check dated October
26 10, 2008, made payable to Respondent for Respondent's services, a \$1,500.00 check made
27 payable to Seattle Funding Group for a loan application fee and a \$400.00 check made
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1 payable to Dan Magee for an appraisal;

2 d. Respondent did not place the \$2,500.00 check made payable to
3 Respondent, the \$1,500.00 check made payable to Seattle Funding Group and/or the
4 \$400.00 check made payable to Dan Magee in escrow pending completion of a loan or a
5 commitment for a loan; and

6 e. Complainants never signed a written agreement which (i) specified the
7 estimated costs by item and the estimated aggregate cost to be paid to third persons
8 (Respondent's \$2,500.00 fee, the \$1,500.00 lender loan application fee and the \$400.00
9 appraisal fee) and (ii) recited that money advanced for costs would not be refunded.

10
11 14. Pursuant to NRS 645B.165, advance payments to cover reasonably estimated
12 costs paid to third persons are not required to be placed in escrow pending completion of a
13 loan or a commitment for a loan "...if the person making (the advance payments) first signs a
14 written agreement which specifies the estimated costs by item and the estimated aggregate
15 cost, and which recites that money advanced for costs will not be refunded...." See, NRS
16 645B.165(1), (3).

17
18 15. Pursuant to NRS 645B.670, "(f)or each violation committed by a mortgage agent,
19 the Commissioner may impose upon the mortgage agent an administrative fine of not more
20 than \$10,000, may suspend, revoke or place conditions upon his license, or may do both, if
21 the mortgage agent, whether or not acting as such...(h)as violated any provision of this
22 chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner...."
23 See, NRS 645B.670(3)(j).

24 **VIOLATIONS OF LAW**

25 After investigating this matter, it has been determined that:

26 a. Respondent failed to deposit advance fees into escrow in violation of NRS
27 645B.165(1), (3).
28

ORDER

NOW, THEREFORE, THE COMMISSIONER OF THE DIVISION HEREBY ORDERS, pursuant to NRS 645B.750, that upon written application to the Division within **twenty (20) days** of the date of this Order, Respondent shall be entitled to a hearing with regards to the contents of this Order referenced below. At that hearing the Division will seek to:

1. Impose an administrative fine against Respondent in the amount of Two Thousand Five Hundred Dollars and No Cents (\$2,500.00), payable to the Division on account of Respondent's violation of Chapter 645B of NRS, the Division's investigative costs in the amount of Four Hundred Eighty Dollars and No Cents (\$480.00) as well as the Division's attorney's fees, if any, incurred herein, to be proven at the hearing; and

2. Require Respondent's payment, in full, to the Division of the administrative fine, investigative costs and fees, if any, within **thirty (30) days** of entry of the Final Order.

Should Respondent not request a hearing within **twenty (20) days** of the date of this Order, the Division will enter a Final Order in this matter against Respondent, as required by NRS 645B.750(2).

Dated this 13th day of November, 2009.

State of Nevada
Department of Business and Industry
Division of Mortgage Lending

By: Joseph L. Waltuch
Joseph L. Waltuch, Commissioner

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on November 20, 2009, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, NOTICE OF INTENT TO IMPOSE FINE AND NOTICE OF RIGHT TO REQUEST HEARING for COLLEEN MARIE FITZGERALD, addressed as follows:

Colleen Marie Fitzgerald
Nevada Loan Source, Inc.
4821 Purple Sage Court
Carson City, NV 89706

Certified Receipt Number: 7008 1830 0002 7959 5055

DATED this 20th day of November, 2009

By: 

Employee of the Division